IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JAIPUR BENCH, JAIPUR

ORDER

1. SB Civil Writ Petition No. 3057/2004

Dr Vinod Jain Vs Jaipur Development Authority & anr

2. SB Civil Writ Petition No. 3124/2004

Dr Vinod Jain Vs Jaipur Development Authority & anr

3. SB Civil Writ Petition No.3125/2004

Dr Richa Jain Vs Jaipur Development Authority & anr

Writ Petitions under Articles 226 and 227 of the Constitution of India, against the order dated 6.5.2004 passed by the Jaipur Development Authority Tribunal, Jaipur.

Date of Order : November 30, 2006

PRESENT

HON'BLE MR JUSTICE ASHOK PARIHAR

Mr RD Rastogi – for petitioners

Mr Bharat Vyas – for respondent No.1 – JDA

BY THE COURT:

Since on similar set of facts same reliefs have been sought, all the writ petitions have been heard together and are being decided by this common order.

The dispute is in regard to regularisation of respective plots in the name of the petitioners in Lal Kothi Scheme, Jaipur. In Writ Petition No. 3057/2004, the petitioner – Dr Vinod Jain – had been allotted plot No.C-

130, measuring 400 sq yards vide lease deed executed on 19.10.2002 and duly registered on 23.10.2002. In Writ Petition No. 3124/2004, the petitioner – Dr Vinod Jain - had been allotted plot No.E-240, measuring 400 sq yards vide lease deed executed on 19.10.2002 and duly registered on 23.10.2002. In Writ Petition No. 3125/2004, the petitioner – Dr Richa Jain – had been allotted plot No. C-129, measuring 400 sq yards vide lease deed executed on 19.10.2002 and duly registered on 23.10.2002. As has come on record, the land of Village Bhojpura in khasra No.40 to 45 and 45/491 was acquired by the State Government and award was also passed accordingly on 9.1.1964. As per award passed on 9.1.1964, the plots in question were allotted to one of the awardees Ishwar Ram on 17.1.1979 by the then Urban Improvement Trust, Jaipur. The petitioners alleged to have purchased the above respective plots from such allottees of 22.4.2001.

It appears that various disputes arose in regard to acquisition of the land in Village Bhojpura and award passed on 9.1.1964. Considering various complications in regard to the land so acquired on behalf of various authorities including the awardees of Lal Kothi Scheme, Pratap Nursery, Anand Nursery and other surrounding areas, a policy decision was taken by the State Government vide order dated 6.12.2001 for settling the disputes in regard to above acquisition and decision was taken to regularise the plots with certain conditions. The policy decision

taken by the State Government vide order dated 6.12.2001 had already been upheld by the Division Bench of this court. Subsequently, the respondent-JDA also, in a meeting held on 28.2.2002, passed certain resolutions in regard to implementation of the policy decision taken by the State Government vide order dated 6.12.2001. Necessary orders wre also issued by the Secretary, JDA on 21.3.2002 in regard to resolution passed by the Board on 28.2.2002.

In pursuance to the policy decision taken by the State Government vide order dated 6.12.2001 and further resolutions passed by the respondent-JDA on 28.2.2002, the petitioners submitted their applications for regularisation of their respective plots. After making detailed enquiry at various stages, with due approval of the higher authorities, the lease deed was duly executed in favour of the petitioners for the respective plots on 19.10.2002. The lease deeds were further registered on 23.10.2002 itself. It was only on 1.2.2003 that a news item was published in the news paper Rajasthan Patrika in regard to illegal allotment and regularisation made by the respondent-JDA in Lal Kothi Scheme. The Dy Commissioner, Zone-III, made a detailed report that the allotment made in favour of the petitioners were strictly in accordance with the policy decisions of the State Government dated 6.12.2001 and the guidelines issued vide resolution dated 28.2.2002 and there have been no irregularity or illegality committed in the present matter. However, a notice was issued to the

petitioners on 19.9.2003 to appear before the JDA Commissioner on 22.9.2003. The hearing could not take place on 22.9.2003 and the same was placed before the JDA Commissioner on 23.9.2003. The decision was taken by the JDA Commissioner on 23.9.2003 itself and order of cancellation of respective lease deeds were passed on 25.9.2003. The orders passed on 25.9.2003 in regard to cancellation of the lease deeds in favour of the petitioners were challenged before the Jaipur Development Authority Tribunal, Jaipur, however, the appeals were dismissed by the JDA Tribunal vide order dated 6.5.2004. Hence, the present writ petitions challenging the orders of cancellation of the lease deeds dated 25.9.2003 as also the order passed by the Tribunal on 6.5.2004.

After having considered submissions made by learned counsel for the parties, I have carefully gone through the material on record as also the original file of allotment made in favour of the petitioners as also the file of cancellation of the lease deeds as produced by learned counsel for the respondent-JDA.

The facts narrated above, more or less, are not disputed. A bare reading of the policy decision notified vide order dated 6.12.2001 would show that various decisions were taken in regard to regularisation of plots in Lal Kothi Scheme area as also some of the lands acquired in Village Bhojpura in the year 1964. As per policy

decision vide order dated 6.12.2001, the awardees of 1964, who had already been allotted plots and the same were not cancelled or cancelled, their regularisation was to be made on the basis of possession and constructions and, on the same ground, on the basis of possession and construction, after site inspection been made by the Zonal Committee, the lease deeds were executed in favour of the petitioners on 19.10.2002. It is not known as to how the things could change course only on the basis of a news item published in a daily news paper after more than three months. Initially, the file was sent to the Minister concerned, who referred the matter back to the JDA to pass necessary orders at their own level. After receiving the file, the JDA Commissioner on 17.9.2003 ordered for issuing notices to the petitioners immediately. The notices were received on 19.9.2003. After hearing, a decision was taken by the JDA Commissioner on 23.9.2003 itself and orders were also passed immediately on 25.9.2003.

A bare reading of the decision taken by the JDA Commissioner on 23.9.2003 would show that the decision had been taken absolutely on irrelevant grounds ignoring the policy decision taken by the State Government on 6.12.2001 and further resolution passed by the JDA on 28.2.2002. Orders had already been passed on 21.3.2002 by the Secretary, JDA in regard to implementation of Resolution No.46 in the meeting held on 28.2.2002. Under the circumstances, it was wholly irrelevant for the then JDA

Commissioner to observe in order dated 23.9.2003 that resolution No.46 passed on 28.2.2002 could not have been acted upon without prior approval of the State Government. There is nothing on record to show that the resolution dated 28.2.2002 passed by the JDA was not at all acted upon or even been withdrawn or rescind subsequently. Even if there would have been some confusion created in pursuance to the policy decision taken by the State Government vide order dated 6.12.2001, since the JDA had passed resolution dated 28.2.2002, the JDA Commissioner had no authority to ignore the resolution dated 28.2.2002 only to cancel the lease deeds executed in favour of the petitioners. The observations made by the then JDA Commissioner are absolutely cryptical and wholly uncalled for.

Policy decisions, by and large, are taken to seek and justify legal outcomes in terms of their consequences for the institution, groups and social relations with considerations of the effect of a decision upon the wider community, explicitly include economic, administrative, social, political and indeed moral consequences. Such concertive decisions cannot be wiped out just by a stroke of pen by an administrative order even with the change of political scenario.

The reply filed on behalf of the respondent JDA to the writ petitions is absolutely vague and evasive. In a long reply, irrelevant facts have been narrated just only

to create confusion in the mind of the Court. On the same facts, the impugned order of the JDA Tribunal is also absolutely vague and casual and has been passed in a cursory manner without application of mind. It may also be pertinent to mention here that awardees had also approached the JDA Tribunal earlier for directions for not dispossessing them from their land and in their appeal a detailed reply along with relevant documents have been placed on record before the Tribunal. The respondent JDA had submitted that after the allotment in favour of the allottees made in pursuance to the award passed on 9.1.1964 and already been cancelled, subsequently, the same has also been regularised in favour of the petitioners. The copies of lease deeds executed in favour of the petitioners had also been placed on record of the Tribunal and it was pleaded that in view of regularisation and lease deed executed in favour of the present petitioners, the awardees cannot be granted any relief by the Tribunal. The copy of the order with the copies of the reply and documents filed on behalf of the respondent JDA before the Tribunal in the appeal filed by the awardees have also been placed on record of the present writ petitions. There is no explanation, whatsoever, as to how two contradictory stands have been taken by the JDA to deny claim of the respective parties.

Be that as it may, as has already been referred above, since the order passed by the JDA Commissioner on

23.9.2003 was absolutely on irrelevant grounds and considerations, in my opinion, the impugned orders passed by the respondent JDA cancelling the lease deeds of the petitioners vide order dated 25.9.2003 as also the order dated 6.5.2004 passed by the JDA Tribunal cannot be sustained in the eyes of law. The impugned orders of cancellation of lease deeds are absolutely illegal, unjustified, arbitrary and capricious.

Accordingly, the writ petitions are allowed. The order of the JDA Tribunal dated 6.5.2004 as also the impugned orders dated 25.9.2003 in regard to cancellation of the lease deeds of the petitioners are quashed and set aside. The petitioners are held entitled for all consequential benefits in view of setting aside the orders dated 25.9.2003. The respondent JDA is further directed to pay a cost of Rs.20,000/- (Rupees Twenty Thousand only) each to the petitioners in the above writ petitions within thirty days from the date of receipt of certified copy of this order.

(Ashok Parihar) J.

bnsharma